

268007

4910-15-U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Diego 03-034]

USCG-2004-16938-37

RIN 1625-AA00

Safety Zone; Pacific Ocean, San Diego Bay, San Diego, CA.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Mission Bay in San Diego, California, in support of the San Diego Fall Classic, a marine event consisting of 120 rowing shells racing on a marked course. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 5:30 a.m. (PST) on November 9, 2003, to 12:30 p.m. (PST) on November 9, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being

available in the docket, are part of docket [COTP San Diego 02-022] and are available for inspection or copying at Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, CA 92101-1064 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Murai, USCG, c/o U.S. Coast Guard Captain of the Port, at (619) 683-6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Final approval and permitting of this event were not issued in time to engage in full notice and comment rulemaking. Publishing a NPRM and delaying the effective date would be contrary to the public interest since the event would occur before the rulemaking process was complete.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. In addition to the reasons stated above, it would be contrary to the public interest not to publish this rule because the event has been permitted and participants and the public

require protection.

Background and Purpose

The San Diego Rowing Club is sponsoring the San Diego Fall Classic, which is held in Mission Bay, San Diego, CA. This temporary safety zone is necessary to provide for the safety of the crews, spectators, and participants of the San Diego Fall Classic and is also necessary to protect other vessels and users of the waterway.

Discussion of Rule

This event begins at the south end of Fiesta Island, proceeds north to Radar Island, south to Vacation Island, and proceeds north to El Carmel Point. The safety zone consists of the navigable waters extending 50 yards to either side of the course line, defined more specifically as follows: starting at a point 32°46'00" N, 117°13'00" W, then northwest to 32°46'10" N, 117°13'45" W, then north to 32°47'00" N, 117°13'30" W, then south to 32°46'15" N, 117°14'00" W, then northwest to 32°46'48" N, 117°14'40" W. All coordinates are North American Datum 1983.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed

it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Most of the entities likely to be affected are pleasure craft engaged in recreational activities and sightseeing. These vessels may have the opportunity to go through or around the safety when conditions allow this. Accordingly, full regulatory evaluation under paragraph 10 (e) of the regulatory policies and procedures of the DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This safety zone would not have a significant economic impact on a substantial number of small entities because this safety zone is limited in scope and duration (in effect for only

seven (7) hours on November 09, 2003). In addition the Coast Guard will publish local notice to mariners (LNM) before the safety zone is enforced.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under FOR FURTHER INFORMATION CONTACT for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order

12630, Governmental Actions and Interference with
Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined

that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record-keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add new § 165.T11-034 to read as follows:

§165.T11-034 Safety Zone: Mission Bay, San Diego, CA.

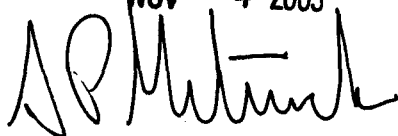
(a) Location. The safety zone consists of the navigable waters extending 50 yards to either side of the course line, defined more specifically as follows: starting at a point 32°46'00" N, 117°13'00" W, then northwest to 32°46'10" N, 117°13'45" W, then north to 32°47'00" N, 117°13'30" W, then south to 32°46'15" N, 117°14'00" W, then northwest to 32°46'48" N, 117°14'40" W. All coordinates are North American Datum 1983.

(b) Effective Dates. This safety zone will be in effect from 5:30 a.m. (PST) to 12:30 p.m. (PST) on November 9, 2003. If the need for the safety zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone.

(c) Regulations. In accordance with the general regulations in § 165.23 of this part, entry into, transit

through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The Patrol Commander may be contacted via VHF-FM Channel 16.

Dated: **NOV 4 2003**

A handwritten signature in black ink, appearing to read "S. P. Metruck", written over the typed name.

Stephen P. Metruck
Commander, U.S. Coast Guard
Captain of the Port, San Diego